

Summary of Selected Elements from the State Water Quality Enforcement Policy

It is State Board policy that the State and Regional Boards shall strive to be fair, firm and consistent in taking enforcement actions while recognizing the individual facts of each case.¹ The policy was developed to provide a framework for identifying and investigating instances of noncompliance, for taking enforcement actions that are appropriate in relation to the nature and severity of the violation, and for prioritizing enforcement resources to achieve maximum environmental benefits. The following discussion highlights some key elements of the policy.

1. Standard, Enforceable Orders

Enforceable orders, which include but are not limited to, waste discharge requirements (WDRs), including National Pollutant Discharge Elimination System (NPDES) permits; waivers; certifications; and cleanup and abatement orders, should include well-defined requirements and apply similar requirements to similar situations to help assure compliance and consistency in enforcement. Whenever the circumstances of a discharge are similar, the provisions of the enforceable orders should be comparable. Standardized enforcement orders should be used, with modifications as needed to address specific situations.

Efforts are underway to standardize National Pollutant Discharge Elimination System (NPDES) permits statewide. Regional Board staff is participating in this process.

2. Compliance Assurance

Compliance with WDRs, Water Quality Control Plan prohibitions, enforcement orders, and other provisions of law administered by the State and Regional Boards can be determined through discharger self-monitoring reports (SMRs), compliance inspections, facility reporting, complaints, and file review.

SMRs: Most permitted dischargers are under orders that require them to submit SMRs. Regional Board staff review all discharger SMRs and should document violations and any subsequent enforcement responses in the enforcement data management system.

Compliance inspections: On-site compliance inspections are conducted by the Regional Board staff under the authority provided in California Water Code sections 13267 and 13383. Compliance inspections provide staff an opportunity to verify that information submitted in SMRs is complete and accurate. Compliance inspections address compliance with WDRs, laboratory quality control and assurance, record

¹ Water Quality Enforcement Policy, 19 February 2002, State Water Resources Control Board, p. 1.

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keeping and reporting, time schedules, best management practices, pollution prevention plans, and any other pertinent requirements. Regional Board staff should document violations identified as the result of compliance inspections and any subsequent enforcement response in the facility file and in the enforcement data management system.

Facility reporting: WDRs, including NPDES permits, should require regulated facilities to report to the Regional Board by phone within a specified time, followed by a written report and/or a discussion in the next SMR, when certain events occur, such as:

- Discharges that are not in accordance with WDRs and that pose an immediate public health threat;
- Bypass of raw or partially treated sewage or other waste from a treatment unit or discharge of wastewater from a collection system in a manner inconsistent with WDRs;
- Treatment unit failure or loss of power that threatens to cause a bypass; and
- Any other operational problems that threaten to cause significant violations of WDRs or impacts to receiving waters or public health.

Complaints and complaint investigations: Often information regarding an actual or potential violation or unauthorized discharge is obtained through telephone or written notification from a member of the public, another public agency or an employee working at a regulated facility. Complaints may also involve nuisance conditions, such as noxious odors that extend beyond a wastewater treatment plant boundary. During the course of an investigation additional violations that are indirectly related or unrelated to the original investigation may also be discovered. Regional Board staff document complaints and findings resulting from complaint investigations.

Case record maintenance and review: WDRs, enforcement orders (e.g., cleanup and abatement orders, cease and desist orders, and time schedule orders), and requests for reports required pursuant to California Water Code section 13267 frequently mandate completion of tasks, which the dischargers must confirm by submission of appropriate reports to the Regional Boards. Failure to submit the reports or to complete the required tasks may be the basis for additional enforcement. Regional Boards use data management systems to track tasks and reports required of dischargers.

3. Timely and Appropriate Enforcement

An enforcement action is any informal or formal action taken to address the failure to comply or the threatened failure to comply with applicable statutes, regulations, plans, policies, or enforceable orders. Enforcement actions should be initiated as soon as possible after discovery of the violation. Enforcement actions should be appropriate for each type of violation and should be similar for violations that are

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similar in nature and have similar water quality impacts. Appropriate enforcement informs the violator that the violation has been noted and recorded by the Regional Board, results in a swift return to compliance, and serves as a deterrent for future violations. When appropriate, enforcement also requires remediation of environmental damage.

4. Progressive Enforcement

Progressive enforcement is an escalating series of actions that allows for the efficient and effective use of enforcement resources to: 1) assist cooperative dischargers in achieving compliance; 2) compel compliance for repeat violations and recalcitrant violators; and 3) provide a disincentive for noncompliance. For some violations, an informal response such as a phone call or staff enforcement letter is sufficient to inform the discharger that the violation has been noted by the Regional Board and to encourage a swift return to compliance. More formal enforcement is often an appropriate first response for more consequential violations. If any violation continues, the enforcement response should be quickly escalated to increasingly more formal and serious actions until compliance is achieved. Progressive enforcement is not appropriate in all circumstances. For example, where there is an emergency situation needing immediate response, immediate issuance of a cleanup and abatement order may be appropriate.

5. Enforcement Priorities

Every violation deserves an appropriate enforcement response. However, due to limited resources, Regional Boards must continuously balance the need to complete non-enforcement program tasks with the need to address violations. Regional Boards must also balance the importance or impact of each potential enforcement action with the cost of that action. Informal enforcement actions are usually very cost effective and are therefore the most frequently used enforcement response. Most formal enforcement actions are relatively costly and must therefore be targeted to the highest priority violations.

The Enforcement Policy identifies specific types of violations in given categories that are to be treated as priority violations. Violation categories include:

- NPDES Effluent and Receiving Water Limitation Violations
- Toxicity Violations
- Violations of Prohibitions
- Spills (including other unauthorized discharges)
- Failure to Submit Plans and Reports
- Violations of Compliance Schedules
- Pretreatment Program Violations
- Storm Water Program Violations
- Clean Water Act Section 401 Violations

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- Violation of Water Quality Objectives in Groundwater
- Discharge of Bio-solids to Land
- Waste Discharge Requirement (WDR) Program Violations
- Aboveground Petroleum Storage Act
- Land Disposal Program Violations
- Failure to Pay Fees, Penalties or Liabilities
- Falsifying Information

The Enforcement Policy also calls for the identification of patterns of chronic violations, and provides criteria for assigning relative priorities for identified priority violations and chronic violations. Criteria include:

- The applicability of mandatory minimum penalty provisions of California Water Code sections 13385 and 13399.33;
- Evidence of, or threat of, pollution or nuisance and the magnitude or impacts of the violation;
- Evidence of negligence or recalcitrance;
- The availability of resources for enforcement;
- USEPA expectations for timely and appropriate enforcement for NPDES delegated programs;
- Specific recommended enforcement pursuant to Section V of this Policy;
- Case-by-case factors that may mitigate a violation including the compliance history of the violator and good-faith efforts of the violator to eliminate noncompliance;
- Impact or threat to watersheds or water bodies that the RWQCB considers high priority (e.g., due to the vulnerability of an existing beneficial use or an existing state of impairment);
- Potential to cleanup and abate effects of pollution; and
- The strength of evidence in the record to support the enforcement action.

As discussed in the staff report, two Regional Boards have developed and implemented formalized processes for enforcement prioritization and tracking. The State Board is currently working with the Regional Boards to encourage similar processes in the other Regions and to develop a consistent process for statewide enforcement prioritization. Central Valley Regional Board staff have started to evaluate approaches and are working with State Board.